

compositions, or to claim 59, drawn to methods for treating arrhythmia. In a telephone conversation on February 1, 1989, it was brought to Examiner Covington's attention that claim 1 embraced the sulphonamide compounds. Hence, it was agreed between applicant and the Examiner that the restriction should have been between claims 1-58 and 59. This is traversed. Since claim 59 is directed to a method of treating arrhythmias using the compounds of claim 2, there is no reason to require restriction of the claims since the properties of the compounds cannot be divorced from the compounds themselves. In any event, it is the United States Patent and Trademark Office's practice to permit the applicant to claim at least one method of use together with compound claims in a pharmaceutical case. However, for completeness of response, applicant elects, with traverse, claims 1-58, the compound claims.

In the Office Action, an election of species was also set forth. This requirement is also traversed. The compounds of the present invention are all related since they are anti-arrhythmic agents and have in common the "alk" moiety connecting the substituted phenyl rings. Thus, an election of species should not be required. However, for completeness of response, applicant elects, with traverse, the species of claim 54.

In the Office Action, claims 1-54, 56 and 58 were rejected under 35 USC 103 as being unpatentable over Ainsworth et al I (United States Patent No. 4,396,627) or Ainsworth et al II (United States Patent No. 4,478,849) taken with Howe et al, Larsen et al I (U.S. Patent No. 3,478,149) Larsen et al II (U.S. Patent No. 3,341,584) in view of Hester. This rejection is traversed. As will be seen in more detail, the presently claimed invention would not have been obvious to one of ordinary skill in

the art in view of Ainsworth et al I or Ainsworth et al II taken with Howe, Larsen I, Larsen II and Hester.

Ainsworth I refers to secondary amines with anti-obesity and or antihyperglycemic activity. Contrary to the Examiner's assertion that "to modify Ainsworth I and II to make a β -blocker would be obvious", a person having ordinary skill in the art would not consider Ainsworth to make a Class III Antiarrhythmic agent, the activity possessed by the present compounds. This activity proceeds through an entirely different mechanism than that of β -blockers. Moreover, Ainsworth I requires the presence of the hydroxy group on the first benzyl carbon and Ainsworth does not teach the substitution on the amino group in the presently claimed compounds. Thus, since the present compounds possess a surprising activity not suggested by Ainsworth I, the present invention would not have been obvious to a person of ordinary skill in the art in view of Ainsworth I.

*Claim
Jewett
longhand*
x etc

In the Office Action, claims 1-54, 56 and 58 were rejected under 35 USC 103 as unpatentable over Ainsworth et al II taken with Howe, Larsen I, Larsen II and Hester. Since the Examiner is rejecting the present claims on the combined references, applicant will argue the combined references. In the first instance, it should be noted that the Examiner has had to combine five references to render obvious the presently claimed invention. Four of these references are from totally different fields of art, i.e. β -blockers or sympathomimetic agents, with Hester being the only reference which refers to compounds having Class III antiarrhythmic activity. Such a combination of references is inappropriate and can only be derived by the impermissible use of hindsight. Even the compounds referred to in Hester are far removed from the presently claimed compounds.

Hester's compounds contain only one phenyl ring and in those cases wherein n is 0, R₂ is hydrogen. This teaches away from the Examiner's assertion that Hester shows the interchangeability of hydrogen and hydroxy. Ainsworth II refers to similar compounds to Ainsworth I. Thus, the arguments presented in relation to Ainsworth I are also applicable herein. Larsen I and Larsen II require that the hydroxy substituent be present on the aryl moiety. Howe refers to compounds which require an amine or substituted amine on the phenyl group, an ether linkage between the phenyl group and the first carbon and a hydroxy substituent on the second carbon, none of which are present in the presently claimed invention. As noted, Hester teaches away from the interchangeability of hydrogen and hydroxy. Thus, the present claims would not have been obvious to one of ordinary skill in the art in view of Ainsworth II, Larsen I, Larsen II and Howe taken with Hester.

In view of the foregoing arguments and amendments, it is respectfully submitted that claims 1-5, 7-11, 13-17, 19-23, 25-29, 31-35, 37-41, 44-48, 50-54, 56 and 58 are in a condition for allowance. Early allowance is respectfully solicited.

Respectfully submitted,

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Robert F. Sheyka
Robert F. Sheyka
Attorney for Applicant
Registration No. 31,304

Pfizer Inc.
235 East 42nd Street
New York, N.Y. 10017-5755
(212) 573-1189

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